

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Mary Lewis,

Plaintiff,

v.

Case No. 2:12-cv-884

Carolyn W. Colvin,
Acting Commissioner of
Social Security,

Defendant.

ORDER

This matter is before the court for consideration of the February 7, 2014, report and recommendation of the United States magistrate judge to whom this case was referred pursuant to 28 U.S.C. §636(b). The magistrate judge recommended that the court grant the Commissioner's motion to dismiss, or in the alternative, for summary judgment, based upon the untimely filing of the instant action. The record reflects that the notice and decision of the Appeals Council affirming the administrative law judge's decision denying plaintiff's claims for disability benefits was mailed to plaintiff and plaintiff's attorney on March 14, 2013. Plaintiff had sixty days from her receipt of the notice to request judicial review. 42 U.S.C. §405(g). Plaintiff was presumed to have received the notice on March 19, 2013, five days after the date of the notice. 20 C.F.R. §442.210(c). Because the sixty-fifth day fell on a weekend, plaintiff had until May 20, 2013, to file her complaint. The Commissioner argued that dismissal was appropriate because the complaint in this case was not filed until June 17, 2013, almost a month beyond the limitations period. Plaintiff filed no response to the Commissioner's motion, nor did she state

in her complaint why it was late. The report and recommendation was mailed to plaintiff by certified mail, and the docket reflects a return receipt signed by plaintiff and dated February 20, 2014.

The report and recommendation specifically advised the parties that failure to object to the report and recommendation within fourteen days of the report "will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation." Doc. 22, p. 17. The time period for filing objections to the report and recommendation has expired, and no party has objected to the report and recommendation.

The court has reviewed the report and recommendation of the magistrate judge, and the court hereby adopts the report and recommendation (Doc. 14). The Commissioner's motion to dismiss (Doc. 13) is granted, and this case is dismissed because it was not filed within the time allowed in §405(g).

Date: March 4, 2014

s/James L. Graham
James L. Graham
United States District Judge